

TRAFLET & FABIAN

ATTORNEYS AT LAW
Carriage Court Two
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ATTORNEYS FOR Defendant
Barclays Bank Delaware

THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

| | | |
|-------------------------|---|--|
| SEAN C. KIELTY, | : | CIVIL ACTION NO. 12-2773(FLW)(TJB) |
| Plaintiff, | : | |
| -vs- | : | |
| BARCLAYS BANK DELAWARE, | : | DEFENDANT BARCLAYS BANK DELAWARE'S ANSWER AND DEFENSES TO PLAINTIFF'S COMPLAINT AND COUNTERCLAIMS AGAINST PLAINTIFF |
| Defendant. | : | |
| | : | (Document Electronically Filed) |
| | : | |

Defendant Barclays Bank Delaware ("Barclays"), by way of Answer to Plaintiff's Complaint, states as follows:

ANSWER TO COMPLAINT

Barclays hereby asserts a General Denial to the allegations set forth in Plaintiff's Complaint.

FIRST DEFENSE

Plaintiff fails to state a claim against Barclays upon which relief may be granted.

SECOND DEFENSE

Plaintiff fails to state any claim against Barclays under the Fair Debt Collection Practices Act, 15 U.S.C. §1692 *et seq.*, upon which relief may be granted.

THIRD DEFENSE

Barclays has complied with the Fair Credit Reporting Act in its access to and handling of the information contained in Plaintiff's consumer credit file and is entitled to each and every defense stated in the Fair Credit Reporting Act and any and all limitations of liability.

FOURTH DEFENSE

Any damages allegedly sustained by Plaintiff are the result of conduct, negligence, carelessness or recklessness of the Plaintiff, or of any other persons or entities over whom Barclays had no administration, supervision or control, nor right of control, and for whose actions Barclays is not and cannot be liable.

FIFTH DEFENSE

While denying the allegations in the Complaint regarding damages allegedly sustained by Plaintiff, Barclays states that if Plaintiff proves such damages, they were caused by the superseding and intervening acts, negligence and/or fault of other parties or entities over whom Barclays had no control, nor right of control, and for whose actions Barclays is not and cannot be liable.

SIXTH DEFENSE

While denying any fault with respect to the subject matter of the Complaint, Barclays states that insofar as such fault on its part may be found, such fault did not proximately cause any damages allegedly sustained by Plaintiff.

SEVENTH DEFENSE

At all relevant times herein, the Plaintiff's alleged damages, which Barclays denies exist, were aggravated by the failure of the Plaintiff to use reasonable diligence to mitigate the same. Therefore, Plaintiff's recovery, if any, should be barred or decreased by reason of his failure to mitigate alleged losses.

EIGHTH DEFENSE

Barclays owed no duty to Plaintiff or breached no duty owed to the Plaintiff.

NINTH DEFENSE

Barclays was not negligent, careless or reckless.

TENTH DEFENSE

All purported statements made by or on behalf of Barclays are truthful and accurate to the best of its knowledge.

ELEVENTH DEFENSE

Barclays breached no duty to and/or contract with the Plaintiff.

TWELFTH DEFENSE

Barclays reserves unto itself all other defenses, affirmative or otherwise, as may prove through discovery to be applicable.

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WHEREFORE, Defendant Barclays Bank Delaware demands judgment dismissing the Complaint with prejudice and such other and further relief as this Court deems just and proper.

COUNTERCLAIMS AGAINST PLAINTIFF SEAN C. KIELTY

Barclays, by way of counterclaim against Plaintiff Sean C. Kielty, states:

FACTS COMMON TO ALL COUNTS

1. On or about March 22, 2010, Mr. Kielty filed a lawsuit against Juniper Bank (n/k/a Barclays Bank Delaware) in the Superior Court of New Jersey, Law Division – Special Civil Part, Small Claims Section, Hunterdon County, Docket No. SC-135-10 (the “Prior Action”).
2. In his Complaint in the Prior Action, Mr. Kielty alleged that Barclays violated the Fair Credit Reporting Act and Fair Debt Collection Practices Act with respect to his Barclays credit card account with the account number ending with 2938.
3. Barclays did not receive timely notice of the Prior Action and thus did not appear for the scheduled trial call.
4. The Prior Action resulted in a judgment being entered in favor of Mr. Kielty and against Barclays.
5. Upon receipt of notice of the judgment entered in the Prior Action, Barclays negotiated a settlement with Mr. Kielty to resolve all claims that were or could have been asserted against Barclays in the Prior Action.
6. The settlement reached between Mr. Kielty and Barclays was memorialized in a Settlement Agreement and General Release executed by both Mr. Kielty and Barclays, effective December 30, 2010 (the “Settlement Agreement”).

7. Pursuant to the terms of the Settlement Agreement, Mr. Kielty agreed “to refrain from knowingly applying for any new credit accounts with Barclays.”

8. By written application executed on April 8, 2011 (the “Application”), Mr. Kielty applied for a US Airways Dividend Miles Premier World MasterCard credit card account with Barclays.

9. The Application explicitly states that “[t]he US Airways Dividend Miles MasterCard credit card is issued by Barclays Bank Delaware.”

10. By signing the Application, Mr. Kielty specifically acknowledged his understanding that “Barclays Bank Delaware may call [him] in connection with this Application and for other matters relating to this account.”

11. In purposeful and knowing breach of his prior agreement to refrain from applying for any new credit accounts with Barclays, Mr. Kielty submitted his application for processing by Barclays.

12. Barclays processed Mr. Kielty’s application and opened a new credit account for him with the assigned account number ending in 7923.

13. In connection with the opening of the account ending in 7923, Barclays sent Mr. Kielty a new US Airways Dividend Miles World MasterCard credit card.

14. In connection with the opening of the account ending in 7923, Barclays also sent Mr. Kielty a copy of the Cardmember Agreement which governs the account. The Cardmember Agreement specifically states that “[t]his Agreement establishes the terms of your credit card account . . . with Barclays Bank Delaware, Wilmington, Delaware.”

15. In breach of his prior agreement not to knowingly apply for any new credit accounts with Barclays, Mr. Kielty activated and began using his Barclays account ending in 7923.

16. Pursuant to the terms of the Cardmember Agreement, Barclays can demand immediate payment of the entire balance owed on Mr. Kielty's account ending in 7923 in any month when the account is past due (i.e., in any month Barclays does not receive the minimum payment due by the payment due date).

17. Barclays advised Mr. Kielty that his Barclays account ending in 7923 was past due on the account statement for the billing period ending August 6, 2011.

18. On the account statement for at least five subsequent billing periods, Barclays advised Mr. Kielty that his Barclays account ending in 7923 remained past due.

19. The last payment received by Barclays from Mr. Kielty for his account ending in 7923 was received on or about January 10, 2012.

20. As of May 6, 2012, Mr. Kielty's Barclays account ending in 7923 had a balance due of \$10,177.43 and his account remains past due.

FIRST COUNT
(Breach of Contract – Settlement Agreement)

21. Barclays repeats and realleges the allegations contained in Paragraphs 1 through 20 as if fully set forth herein.

22. Pursuant to the terms of the Settlement Agreement, Mr. Kielty agreed to refrain from knowingly applying for any new credit accounts with Barclays after December 2010.

23. By knowingly applying for a credit card account with Barclays in April 2011, Mr. Kielty breached the Settlement Agreement.

24. As a direct and proximate result of Mr. Kielty's breach of the Settlement Agreement, Barclays has suffered financial damages.

WHEREFORE, Barclays demands judgment on its counterclaims in its favor and against Mr. Kielty for compensatory and consequential damages and such other relief as this Court deems just, equitable and proper.

SECOND COUNT
(Breach of Contract – Cardmember Agreement)

25. Barclays repeats and realleges the allegations contained in Paragraphs 1 through 24 as if fully set forth herein.

26. Pursuant to the Cardmember Agreement, Mr. Kielty agreed to timely pay Barclays for all charges made to his Barclays account ending in number 7923, plus any interest assessed on the account and any other charges and fees which may be owed under the terms of the Cardmember Agreement.

27. In breach of his obligations under the Cardmember Agreement, Mr. Kielty has failed to pay charges, interest and fees on his Barclays account ending in number 7923 in the amount of \$10,177.43 and this failure has caused his Barclays account to be in default.

28. Barclays has suffered financial damages as a result of Mr. Kielty's breach of the Cardmember Agreement.

WHEREFORE, Barclays demands judgment on its counterclaims in its favor and against Mr. Kielty for compensatory and consequential damages, together with attorneys' fees, costs of suit, and such other relief as this Court deems just, equitable and proper.

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THIRD COUNT
(Book Account)

29. Barclays repeats and realleges the allegations contained in Paragraphs 1 through 28 as if fully set forth herein.

30. Mr. Kielty is indebted to Barclays in the sum of \$10,177.43, exclusive of costs and attorneys' fees, for charges made by him or on his behalf to his Barclays account ending in number 7923.

31. Due to Mr. Kielty's failure to pay the amounts owed on his Barclays account ending in number 7923 in a timely manner, and pursuant to the terms of his Cardmember Agreement with Barclays, his account ending in number 7923 is in default.

32. As a result of this default, and pursuant to the terms of the Cardmember Agreement between Barclays and Mr. Kielty, Barclays is entitled to immediate payment of the entire amount owed to Barclays by Mr. Kielty.

33. The amount outstanding on Mr. Kielty's book account with Barclays, plus all costs and attorneys' fees in connection therewith, constitutes an "indebtedness" of Mr. Kielty, for which he is responsible.

WHEREFORE, Barclays demands judgment on its counterclaims in its favor and against Mr. Kielty for compensatory and consequential damages, together with interest, attorneys' fees, costs of suit, and such other relief as this Court deems just, equitable and proper.

FOURTH COUNT
(Fraud)

34. Barclays repeats and realleges the allegations contained in Paragraphs 1 through 33 as if fully set forth herein.

35. In settlement of his claims against Barclays in the Prior Action, and as memorialized in the Settlement Agreement, Mr. Kielty agreed to refrain from knowingly applying for any new credit accounts with Barclays.

36. In his Application dated April 8, 2011, for a new credit account with Barclays, Mr. Kielty purposefully and knowingly omitted any reference to or mention of the Prior Action, the Settlement Agreement or specifically his prior agreement not to apply for any new credit accounts with Barclays.

37. Mr. Kielty intended that Barclays rely on his omission in considering whether to open a new credit account for him.

38. Barclays did in fact rely on Mr. Kielty's omission in agreeing to open the account ending in 7923 for him.

39. Barclays has suffered damages as a result of Mr. Kielty's omission as to his prior agreement not to apply for any new credit accounts with Barclays.

WHEREFORE, Barclays demands judgment on its counterclaims in its favor and against Mr. Kielty for compensatory, consequential and punitive damages, a permanent injunction precluding Mr. Kielty from applying for any new credit accounts with Barclays, together with interest, attorneys' fees, costs of suit, and such other relief as this Court deems just, equitable and proper.

Dated: May 15, 2012

TRAFLLET & FABIAN

By: s/ Debra M. Albanese

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DESIGNATION OF TRIAL COUNSEL

Barclays hereby designates Debra M. Albanese as trial counsel in the above-captioned matter. Barclays reserves the right to amend this designation as necessary.

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CERTIFICATE OF SERVICE

I hereby certify that on this date a true and correct copy of DEFENDANT BARCLAYS BANK DELAWARE'S ANSWER AND DEFENSES TO PLAINTIFF'S COMPLAINT AND COUNTERCLAIMS AGAINST PLAINTIFF was served upon the following via UPS Overnight:

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s/ Debra M. Albanese
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Dated: May 15, 2012

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